

**SURVEY ON IMPLEMENTATION
OF IOSCO OBJECTIVES AND PRINCIPLES
OF SECURITIES REGULATION**

SELF-ASSESSMENT

Response of the Commodity Futures Trading Commission

Regulator responsible for completing the survey: Commodity Futures
Trading Commission

Other contributing regulators or responsible authorities: None

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[revised May 2001]

Principle 1: The responsibilities of the regulator should be clear and objectively stated.

1. What is your assessment of the current status of your jurisdiction regarding implementation of this Principle?

Implemented Partially implemented Not Implemented

1.1 If implemented:

1. Please describe how this principle has been implemented.

The responsibilities of the regulator, the Commodity Futures Trading Commission, are set out with specificity in enabling legislation, the Commodity Exchange Act (CEA), 7 U.S.C 1 et seq., as amended by the Commodity Futures Modernization Act of 2000 (CFMA), Pub. L. No. 106-554, 114 Stat. 2763 (2000), and implementing regulations of the CFTC, 7 C.F.R. Part 1 et seq. See legislation at: <http://www.cftc.gov/cftc/cftclawreg.htm>

Other Federal Law may affect the authority of the CFTC, for example, the Administrative Procedure Act which governs the public rule-making process.

2. Are further improvements or changes proposed? If so, please describe.

The CFTC has recently published proposed rules to implement the statutory modifications contained in the Commodity Futures Modernization Act of 2000. These rule proposals and any final adoptions can be accessed on the CFTC's web-site at: <http://www.cftc.gov/cftc/cftcfedregs.htm>

In brief, the CEA, as amended by the CFMA, establishes two tiers of regulated markets, designated contract markets and registered derivative transaction execution facilities (DTFs). In addition, the CEA, as amended, provides for two markets exempt from regulation, exempt boards of trade and exempt commercial markets. In general, the new framework tailors the level of regulation to the nature of the product and market participants.

Among other things, the CEA, as amended, provides greater regulatory clarity to the treatment of swap transactions and authorizes, subject to regulatory development by the CFTC and US Securities and Exchange Commission, single share futures and narrow based stock index futures. Finally, the CEA provides for separate regulation of clearing organizations.

Principle 2: The regulator should be operationally independent and accountable in the exercise of its functions and powers

2. What is your assessment of the current status of your jurisdiction regarding implementation of this Principle?

Implemented Partially implemented Not Implemented

2.1 If implemented:

1. Please describe how this principle has been implemented:

Section 2(a)(2)(A) authorizes the establishment of the CFTC as an independent agency of the United States Government, to be composed of five commissioners appointed by the President of the United States, by and with the advice and consent of the United States Senate. Each CFTC Commissioner holds office for a term of five years. The terms of the Commissioners are staggered due to the CEA's initial requirement that the first Commissioners' terms were to expire one, two, three, four and five years from the date the CFTC began operations on April 21, 1975. Not more than three Commissioners may be members of the same political party.

The President of the United States appoints, by and with the advice and consent of the Senate, a member of the CFTC as Chairman, who serves as Chairman at the pleasure of the President. The President may appoint at any time, with the advice and consent of the Senate, a different Chairman, and the CFTC Commissioner previously appointed as Chairman may complete his or her term as a CFTC Commissioner.

The CFTC is accountable for its conduct to the United States Congress. The House Committee on Agriculture and its Subcommittee on Risk Management and Specialty Crops, and the Senate Agriculture, Nutrition and Forestry Committee and its Subcommittee on Research, Nutrition and General Legislation have the principal responsibility for oversight of the CFTC. In general, these Committees handle, in the first instance, the reauthorization, budget and funding decisions for the CFTC, as well as bills affecting the CEA.

Section 8(i) of the CEA requires the Comptroller General of the United States to conduct reviews and audits of the CFTC and make reports thereon. Section 8(i) of the CEA directs the CFTC to make available to the Comptroller General (generally through its OMB) any information regarding the powers, duties, organization, transactions, operations and activities of the CFTC, as well as access to any books and records [subject to confidentiality requirements], as the Comptroller General may require.

Section 8(h) of the CEA requires the CFTC to submit to Congress a written report within 120 days after the end of each fiscal year detailing the operations of the CFTC during that fiscal year. The CFTC is required to include in this annual report such information, data and legislative recommendations as it deems advisable with respect to the administration of the CEA and its powers and functions under the CEA.

Section 18(b) of the CEA requires that the annual report contain plans and findings regarding implementation of section 18(a) of the CEA, which mandates certain research and information programs. The CFTC annual report to Congress and annual performance plan is published. Generally, reports following inquiries by the Comptroller General are made public.

Principle 3: The regulator should have adequate powers, proper resources and the capacity to perform its functions and exercise its powers.

3. What is your assessment of the current status of your jurisdiction regarding implementation of this Principle?

Implemented Partially implemented Not Implemented

3.1. If implemented:

1. Please describe how this principle has been implemented:

Powers:

The CEA provides the CFTC with comprehensive registration, rulemaking, enforcement and adjudicatory powers with regard to the oversight and regulation of the US futures markets. Among other things, the CFTC has the power to conduct direct surveillance of futures markets (see sections 4g and 4n of the CEA), obtain information from regulated entities and unregulated affiliates, markets, institutions, and customers involved in futures transactions (see sections 4g and 4n of the CEA), conduct investigations and sanction violations of the CEA (see sections 8(a)(1) and 6(c),(d) of the CEA), cooperate and share information with other federal, state and foreign agencies (see sections 12(a) and 8(e) of the CEA), direct markets to alter or supplement their rules and to take such action as it deems necessary to maintain or restore orderly trading, including to suspend or revoke a market's designation (see sections 8a(7) and (9) of the CEA), and to otherwise promulgate rules needed to implement the CEA. See CEA section 8(a)(5).

Resources:

Funding for the CFTC is included as part of the President of the United States' formal budget request for operational funding to the United States Congress. Section 2(a)(9)(A) of the CEA, 7 U.S.C. § 4a, requires that whenever the CFTC submits any budget request to the President or OMB (the agency within the office of the President which analyzes and makes recommendations to the President on budget matters), the CFTC shall concurrently transmit copies of the request to the House and Senate Appropriations Committees and the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition and Forestry. The CFTC's initial budget request may be revised during its consideration by OMB and then, after submission to Congress, by the appropriate House and Senate committees (which may hold hearings, request additional testimony by CFTC Commissioners or staff, or request additional documentation). The specific vehicle to authorize the CFTC's budget funds is through the adoption by the Congress of a specific bill authorizing and funding the CFTC's operations (as part of the President's budget).

Capacity (sufficiency) of resources:

Determinations regarding the sufficiency of the CFTC's requested resources are made by the United States Congress during its consideration of the CFTC's formal budget request. Information regarding specific needs of the CFTC are communicated by the formal budget document and related written submissions, direct testimony by the Chairman and/or CFTC Commissioners to Congress and by CFTC and Congressional staff communications and meetings.

Section 12 of the CEA authorizes the CFTC to employ personnel and obtain necessary technical resources: Section 12(b)(1) authorizes the CFTC to employ such investigators, special experts, Administrative Law Judges, clerks and other employees as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated by Congress; section 12(b)(2) of the CEA authorizes the CFTC to employ experts and consultants; and section 12(b)(3) of the CEA authorizes the CFTC to make and enter into contracts with respect to all matters which in the judgment of the CFTC are necessary and appropriate to effectuate the purposes of the CEA.

2. Are further improvements or changes proposed? If so, please describe.

The CFTC has delegated certain responsibilities to the National Futures Association, a registered futures association under the CEA, and is seeking additional resources to enhance staff salaries and its in-house oversight program.

Principle 4: The regulator should adopt clear and consistent regulatory processes.

4. What is your assessment of the current status of your jurisdiction regarding implementation of this Principle?

Implemented Partially implemented Not Implemented

4.1 If implemented:

1. Please describe how this principle has been implemented:

CFTC rulemaking must comply with the procedural requirements of the Administrative Procedure Act, which are intended to provide public notice and opportunity for public comment in the rulemaking. 5 U.S.C. § 553 specifically requires Federal administrative agencies such as the CFTC to publish a notice of proposed rulemaking in the *Federal Register* and to provide interested persons an opportunity to participate in the rulemaking through submission of written data, views or arguments with or without an opportunity for oral presentations.

Part 147 of the CFTC's rules, 17 C.F.R. Part 147, implements the open meetings requirement of the Government in the Sunshine Act, 5 U.S.C. 552b, which mandates the conditions under which CFTC Commissioners must conduct open meetings. As stated in rule 147.1(b), "among the primary purposes of these rules is the CFTC's desire to inform the public to the fullest extent possible of its activities as an aid to its properly carrying out its responsibility for administering and enforcing the Commodity Exchange Act . . ."

The CFTC also has adopted regulations that provide objective due process procedures to ensure that various aspects of its programs are conducted with fairness and impartiality.

Federal agencies such as the CFTC also must comply with certain general rulemaking requirements (e.g., the Regulatory Flexibility Act that requires agencies to take into account the impact of proposed rules on small businesses, and the Paperwork Reduction Act that requires agencies to review rules to evaluate the information collection burden such rules would impose on the public).

CFTC rule 140.98 requires that all interpretative legal advice with respect to the CEA or any rule, regulation or order issued or adopted by the CFTC under such authority, a statement by staff that staff would not recommend that the CFTC take enforcement action (i.e., no-action letters) or an exemption from the provisions of the CEA, must be made available for inspection and copying by any person. See also CFTC rule 140.99 establishing procedural requirements for requesting exemption, no-action and interpretative letters.

The CFTC publishes its rules in the federal register and Code of federal regulations as required by federal law, and otherwise publicizes its actions, rules, and policies through printed publications and on the CFTC's internet website at www.cftc.gov.

Principle 5: The staff of the regulator should observe the highest professional standards including appropriate standards of confidentiality.

5. What is your assessment of the current status of your jurisdiction regarding implementation of this Principle?

Implemented Partially implemented Not Implemented

5.1 If implemented:

1. Please describe how this principle has been implemented:

CFTC is subject to Federal law and CFTC rules relating to ethical conduct, conflicts of interest, and misuse of non-public information.

Subpart C of Part 140 of the CFTC's regulations, 17 C.F.R. Part 140, establish general ethical standards of conduct for CFTC employees and CFTC Commissioners. Rule 140.735-2 restricts the business and financial transactions and interests; rule 140.735-3 restricts non-governmental employment and outside activities; rule 140.735-4 restricts the receipt and disposition of foreign gifts and decorations; rule 140.735-5 prohibits the disclosure of non-public commercial, economic or official information to any unauthorized person; and rule 140.735-6 restricts the scope of former CFTC employees to practice or otherwise represent a person before the CFTC. Part 146 of the CFTC rules, 17 C.F.R. Part 146, implements the Privacy Act of 1974, which provides protections for information concerning an individual. Among the primary purposes of these rules are to permit individuals to determine whether information about them is contained in Government files and, if so, to obtain access to that information; to establish procedures whereby individuals may have inaccurate and incomplete information corrected; and, to restrict access by unauthorized persons to that information.

Regulations issued by the U.S. Office of Government Ethics, 5 C.F.R. 2635, also apply to CFTC employees and cover the following areas: basic obligations of public trust; gifts from outside sources; gifts between employees; conflicting financial interests; impartiality in performing official duties; seeking other employment; misuse of position; and outside activities.

Executive Order 12674 of April 12, 1989 issued by the President of the United

States also mandates high principles of ethical conduct for government employees.

While greatly detailed, in substance all of these ethical requirements establish that public service is a public trust and that all government employees must avoid both explicit conflicts of interests as well as even the appearance of impropriety in the conduct of their official business.

In addition, CEA § 9(c) makes it a felony punishable by a fine of not more than \$500,000 or imprisonment for up to 5 years, or both, for a CFTC employee or CFTC Commissioner to trade commodity futures or to participate directly or indirectly in any investment transaction in an actual commodity if nonpublic information is used in the transaction or if prohibited by CFTC rules. CEA § 9(d) makes it a similarly punishable felony to pass on or otherwise benefit from information he or she receives in the course of employment which may affect or tend to affect the price of commodities.

Except as otherwise provided in the CEA, section 8 (a) of the CEA prohibits the CFTC from disclosing publicly data and information that would separately disclose the business transactions, or market positions of any person and trade secrets or names of customers. Section 9(a)(5) makes it a felony punishable by a fine of up to \$500,000 for an individual and/or imprisonment up to five years if any person willfully violates any other provision of the CEA.

Principle 6: The regulatory regime should make appropriate use of Self-Regulatory Organizations (SROs) that exercise some direct oversight responsibility for their respective areas of competence, and to the extent appropriate to the size and complexity of the markets.

6. Please briefly describe the role of SROs in your jurisdiction and explain, with respect to each SRO:
 - a. what functions it is required to perform;
 - b. the source of its powers to perform those functions; and
 - c. what general limitations, if any, exist on the scope of the powers of SROs.

Markets:

Under the CEA and CFTC rules, designated contract markets and registered derivatives transaction execution facilities (and related or independent) clearing organizations) are required to have certain rules and to enforce their rules, which

must meet CFTC core standards and be submitted to the CFTC. CFTC rules and programs provide for CFTC oversight of these exchange functions. Exchanges have considerable flexibility in disciplining their members subject to CFTC and judicial review. Exchanges, however, cannot expel members from the industry or freeze assets or otherwise obtain injunctive relief or administrative relief, such as disgorgement. Although all trades are subject to exchange rules exchanges in their authority with respect to non-members as more limited than --- with respect to members. **Note: see proposed rules “A new regulatory framework for trading facilities, intermediaries and clearing organizations” that was published in the Federal register on March 9, 2001 at : <http://www.cftc.gov/foia/fedreg01/foi010309a.htm>**

Registered Futures Associations:

The National Futures Association, NFA, was granted registration by the CFTC as a “registered futures association” in 1981 pursuant to section 17(p) of the CEA. As a registered futures association, NFA is considered to be a self-regulatory organization (SRO). Section 17(p) requires NFA to: adopt rules establishing training standards and proficiency testing for persons involved in the solicitation of transactions subject to the CEA, supervisors of such persons, and all persons for whom it has registration responsibilities and to create a program to audit and enforce compliance with such standards; establish minimum capital, segregation, and other financial requirements applicable to its members for whom such requirements are imposed by the CFTC and to implement a program to audit and enforce compliance with such requirements; establish minimum standards governing the sales practices of its members and members’ associated persons; and establish special supervisory guidelines to protect the public interest relating to the solicitation by telephone of new futures or options accounts.

NFA has incorporated by reference into its rules the CFTC’s segregation, record keeping, and related reporting requirements for futures commission merchants (FCMs), commodity pool operators (CPOs), introducing brokers (IBs), and commodity trading advisors (CTAs). In addition, NFA has adopted net capital rules for FCMs and IBs that, as required by the CEA, are no less stringent than those of the CFTC. NFA’s member audit program primarily applies to registrants that are not members of a designated contract market.

The CFTC may delegate to any registered futures association certain registration functions. The CFTC has delegated to NFA registration processing functions and the authority to take adverse action, such as to revoke or to deny registration, against registrants and applicants for registration based upon disqualifying conduct set forth in Sections 8a(2) and (3) of the CEA. The CFTC retains the authority to take such actions as well. NFA also has certain delegated functions with respect to ethics training required of CFTC registrants.

In recent years, the CFTC has delegated greater responsibilities to NFA (e.g., registration, review of disclosure documents)) while maintaining vigorous oversight to assure that these functions are carried out fairly and effectively.

The CFTC has general oversight responsibility for all NFA functions to ensure compliance with the CEA and rules thereunder. The CFTC also monitors NFA for enforcement of its own rules and by-laws. As part of the CFTC's enforcement program, NFA has assisted the CFTC in the administration of funds recovered from persons required to make restitution to victims and participated in a study of "best practices" for order handling.

Principle 7: SROs should be subject to the oversight of the regulator and should observe standards of fairness and confidentiality when exercising powers and delegated responsibilities.

7. What is your assessment of the current status of your jurisdiction regarding implementation of this Principle?

Implemented Partially implemented Not Implemented

7.1 If implemented:

The CFTC has responsibility under the CEA to ensure that SROs require their members to comply with the CEA and the SROs own rules. Designated contract markets must adhere to core principles in the following areas on a continuing basis: (1) compliance with rules,(2) contracts not readily subject to manipulation, (3) monitoring of trading, (4) position limitations or accountability, (5) emergency authority, (6) availability of general information, (7) daily publication of trading information, (8) execution of transactions, (9) trade information, (10) financial integrity of contracts, (11) protection of market participants, (12) dispute resolution, (13) governance fitness standards, (14) conflicts of interest, (15) composition of boards of mutually owned contract markets, (16) record keeping, and (17) antitrust considerations. Similar obligations with respect to ten core principles must be met by derivatives transaction trading facilities. The CFMA anticipates that the Commission will provide guidance and set forth acceptable practices for satisfaction of the core principles. See proposed rules at: <http://www.cftc.gov/foia/fedreg01/foi010309a.htm>

Requirements for registration of an entity as a registered futures association are set forth in section 17(b) of the CEA. Among other things, section 17(b) requires that the CFTC find that the association is in the public interest and will be able to comply with the ongoing requirements of the CEA, ensure fair representation of its members, prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade and protect the public interest, provide

appropriate discipline of its members, provide a fair and orderly procedure for discipline and the settlement of grievances, and provide for meaningful representation on the governing board of a diversity of membership.

Principle 8: The regulator should have comprehensive inspection, investigation and surveillance powers.

8. What is your assessment of the current status of your jurisdiction regarding implementation of this Principle?

Implemented Partially implemented Not Implemented

8.1 If implemented:

1. Please describe how this principle has been implemented:

The CFTC carries out periodic routine inspections and audits of self-regulatory organizations to ensure that those SROs are carrying out their obligations under the CEA. The CFTC imposes a duty in the first instance on designated contract markets to establish a continuing affirmative action program to secure compliance with, among other things, the CEA and with exchange rules and by-laws. (rule 1.51) The CFTC staff has issued guidance as to how an SRO should conduct its financial and sales practice programs. As part of that process, individual firms are inspected. Under this system of self-regulation, the CFTC conducts audits of the sufficiency of the SROs' compliance programs. The CFTC does not carry out periodic routine inspections of the business operations of intermediaries. However, the CFTC does inspect individual intermediaries on a for cause basis and on a sampling basis as part of its audits of SRO compliance programs.

Through its examination power, the CFTC can obtain information from *registered* individuals and entities without judicial action. Sections 4g and 4n of the CEA provide the CFTC with the authority to examine all the books and records of registered individuals and entities. Pursuant to section 5(2) of the CEA, all records required to be maintained by futures exchanges are open at all times to inspection by any representative of the CFTC or the United States Department of Justice

The CFTC's access to records includes nonpublic and public information held by individuals and entities regulated by the CFTC (futures commission merchants, floor brokers, floor traders, introducing brokers, commodity trading advisors, commodity pool operators, associated persons, leverage transaction merchants, agricultural trade option merchants and exchanges) including customer information and to information about persons that do business with such regulated individuals and entities.

The CFTC has broad subpoena powers and may obtain information from any individual or entity in connection with possible violations of futures laws whether the individual or entity is registered or not. Section 6 (c) of the CEA authorizes the CFTC to subpoena the production of documentary and testimonial evidence "from any place in the United States."

Principle 9: The regulator should have comprehensive enforcement powers.

9. What is your assessment of the current status of your jurisdiction regarding implementation of this Principle?

Implemented Partially implemented Not Implemented

9.1 If implemented:

1. Please describe how this principle has been implemented:

The CFTC has wide ranging non-criminal enforcement powers under the CEA. Among other things, the CFTC has power to seek orders and/or take other action to ensure compliance with regulatory, administrative and investigations, to impose administrative sanctions and/or seek orders from courts or tribunals, to refer matters for possible criminal prosecution by the US department of Justice, to order the suspension of trading or to take other appropriate action to restrict trading and to enter into settlements.

When enforcement investigations indicate that there is reason to believe that violative conduct has occurred, the CFTC files either administrative or civil injunctive enforcement actions against the alleged wrongdoers. In administrative actions, wrongdoers who are found to have violated the CEA or CFTC regulations or orders can be prohibited from trading on U.S. futures markets and, if registered, have their registrations suspended or revoked. Violators also can be ordered to cease and desist from further violations, to pay civil monetary penalties of \$110,000 per violation or triple their monetary gain, and to pay restitution to those persons harmed by the misconduct. See sections 6 (c) and 6(d) of the CEA. In civil injunctive actions, defendants can be enjoined from further violations, their assets can be frozen, and their books and records can be impounded. Defendants also can be ordered to disgorge all illegally obtained funds, to make full restitution to customers, and to pay civil monetary penalties. See CEA § 6c.

Willful violations of the CEA and CFTC regulations may be criminally prosecuted

by the Department of Justice. Such violations can prompt a criminal action for violation of the CEA or other federal criminal statutes (mail fraud, wire fraud and conspiracy), and may result in fines or imprisonment.

Principle 10: The regulatory system should ensure an effective and credible use of inspection, investigation, surveillance and enforcement powers and implementation of an effective compliance program.

10. What is your assessment of the current status of your jurisdiction regarding implementation of this Principle?

Implemented Partially implemented Not Implemented

10.1 If implemented:

1. Please describe how this principle has been implemented:

Summary: The CFTC has an active compliance program that involves periodic and continuing surveillance, the adoption of performance standards and guidance for SRO, specific oversight of SROs and public reporting of the results, development of audit guidance, taking of enforcement action, production of public investigation reports, and regulatory and enforcement and educational responses to observed deficiencies. The CFTC also has worked with other derivatives regulators to develop practical, cooperative arrangements for conducting surveillance of related markets and products.

Registrants: The CFTC conducts periodic regulatory oversight audits of the SROs and, based on any information that may be revealed, may initiate further investigations of SRO members for cause (*i.e.*, compliance or trade practice investigations). Enforcement investigations of any regulated entity and persons who should be registered generally are initiated on a for cause basis. Regulatory oversight audits may include results of certain direct audits of members by CFTC, which are undertaken as a quality control on SRO procedures.

Market Surveillance Program: The CFTC conducts a market surveillance program to detect and prevent price manipulation in futures and option markets. The principal goals of market surveillance are to spot adverse situations in these markets and to pursue appropriate remedial actions, in coordination with the involved exchange, to avoid market disruption. To accomplish these objectives the market surveillance staff must determine when a trader's position in a futures market becomes so large relative to other market factors that the trader is capable of causing prices to diverge from legitimate supply and demand conditions. The surveillance staff routinely collects and analyzes daily data concerning overall

supply and demand conditions in the cash market, cash and future prices and price relationships, and the sizes of hedgers' and speculators' positions in the futures market.

At the heart of the CFTC's market surveillance system (and also as an important component of its financial surveillance system) is the large-trader reporting system. In order to identify potentially disruptive futures positions, the CFTC staff uses its reporting system to collect and analyze data on large trader positions in all commodities. Reportable positions—daily reports of futures positions above specified levels set for reporting purposes—are obtained from futures commission merchants, clearing members and foreign brokers. Exchanges also provide the daily positions that each clearing member is carrying in each futures and options contract on each underlying commodity.

Since traders frequently carry futures positions through more than one FCM and since individuals sometimes control, or have a financial interest in more than one account, the CFTC routinely collects information that enables its surveillance staff to aggregate related accounts. FCMs must file a form which identifies each new account with reportable positions for each futures contract. In addition, if a trader's position reaches a reportable level, the trader may be required to file a more detailed identification report to identify accounts and reveal any relationships that may exist with other accounts or traders.

An additional monitoring mechanism allows surveillance economists to investigate further the positions of large traders by instituting a "special call," which requires a trader to report their futures and option positions with all brokerage firms, or their cash market or OTC positions. The trader is required to give information on their trading and delivery activity. This mechanism may be used when a trader is using too many brokers to be easily monitored through required reports. Special calls also may be used to examine cash market positions and commitments in relation to futures market positions to access the economic rationale of the trader's overall position. The CFTC thus has the authority and techniques to investigate and discover the identifies of the true account owners and controllers of large positions, whether domestic or foreign.

The market surveillance process is not conducted exclusively at the CFTC. Regulated futures markets conduct and maintain their own market surveillance programs as part of their self-regulatory responsibilities.

Principle 11: The regulator should have authority to share both public and non-public information with domestic and foreign counterparts.

11. What is your assessment of the current status of your jurisdiction regarding implementation of this Principle?

Implemented

Partially implemented

Not Implemented

11.1 If implemented:

The CFTC may, upon request, furnish to any foreign futures authority, or any department or agency of any foreign government or any political subdivision thereof, acting within the scope of its jurisdiction any information in the possession of the CFTC obtained in connection with the administration of the Act provided that the CFTC “is satisfied that the information will not be disclosed by such foreign futures authority, department or agency except in connection with an adjudicatory action or proceeding brought under the laws of the foreign government or political subdivision to which such foreign government or political subdivision or any department or agency thereof, or foreign futures authority is a party.” CEA section 8(e).

[Section 1a (10) defines a “foreign futures authority” as “any foreign government, or any department, agency, governmental body or regulatory organization empowered by a foreign government to administer or enforce a law, rule or regulation as it relates to a futures or option matter.”]

The CFTC is also permitted to provide assistance, including the use of its compulsory powers, to a foreign futures authority upon request “if the requesting authority states that the requesting authority is conducting an investigation which it deems necessary to determine whether any person has violated, is violating, or is about to violate any laws, rules or regulations relating to futures or options matters that the requesting authority administers or enforces” without regard to whether the facts stated in the request also constitute a violation of the laws of the United States. CEA §12 (f) (1), (2). In responding to such requests, the CFTC must consider:

- whether the requesting authority has agreed to provide reciprocal assistance to the Commission in futures and options matters; and
- whether compliance with the request would prejudice the public interest of the United States.

The CFTC has provided assistance to many governmental authorities both on a case-by-case basis and pursuant to formal MOUs under these provisions. More detailed information on the CFTC’s powers to provide investigative assistance is enclosed.

Confidentiality - The confidentiality restrictions placed on information provided by the CFTC relate to the nature of the specific information provided. With respect to

nonpublic information generally, section 8(e) of the CEA requires that nonpublic information provided to a requesting authority not be disclosed except in connection with an adjudicatory action or proceeding in the jurisdiction of the requesting authority to which the authority or its government is a party.

In order to grant such access, the CFTC asks that, in the absence of a request submitted pursuant to a formal memorandum of understanding between the CFTC and the requesting authority, the foreign authority provide a written access request setting forth its need for the requested information and providing confidentiality undertakings.

Restricted uses – In granting requests for assistance, the CFTC generally will permit information it provides to be used for the purposes stated within the request with respect to ensuring compliance with, or enforcement of, the laws and regulations of the requesting authority and for the purposes stated within the general framework of the use stated in the request including conducting a civil or administrative enforcement proceeding, assisting in a criminal prosecution, assisting in a self-regulatory organization disciplinary action, or conducting any investigation related thereto for any general charge applicable to the violation of the provisions specified in the request.

Reciprocity – Because the CFTC’s approach is to seek to maximize the amount of available assistance, it has not imposed an inflexible reciprocity requirement on requests for assistance. Rather, in deciding whether to grant assistance, the CFTC is directed by section 12(f)(2) of the CEA statute to “consider whether . . . the requesting authority has agreed to provide reciprocal assistance to the CFTC in futures and options matters” and whether “compliance with the request would prejudice the public interest of the United States.”

Principle 12: Regulators should establish information sharing mechanisms that set out when and how they will share both public and non-public information with their domestic and foreign counterparts.

12. What is your assessment of the current status of your jurisdiction regarding implementation of this Principle?

Implemented Partially implemented Not Implemented

12.1 If implemented:

1. Please describe how this principle has been implemented:

The CFTC has entered into numerous memoranda of understanding (MOU) for enforcement and regulatory purposes and can share information with domestic and foreign authorities. These MOUs provide a structure for providing assistance and sharing of information, with provisions to address confidentiality and use of information. The CFTC also shares information under numerous program specific arrangements and on an ad hoc basis under its general authority. See also CFTC Backgrounder at www.cftc.gov.

Principle 13: The regulatory system should allow for assistance to be provided to foreign regulators who need to make inquiries in the discharge of their functions and exercise of their powers.

13. What is your assessment of the current status of your jurisdiction regarding implementation of this Principle?

Implemented Partially implemented Not Implemented

13.1 If implemented:

1. Please describe how this principle has been implemented:

Section 8(e) of the CEA authorizes the CFTC to provide information in the possession of the CFTC obtained in connection with the administration of the CEA to a “foreign futures authority” or any department or agency of a foreign government or any political subdivision thereof acting within the scope of its authority.” Section 1a (10) defines a “foreign futures authority” as “any foreign government, or any department, agency, governmental body or regulatory organization empowered by a foreign government to administer or enforce a law, rule or regulation as it relates to a futures or option matter.” See response to Principle 1 for the full range of assistance that may be provided to foreign regulators.

Section 12(f)(1) of the Commodity Exchange Act expressly states that the CFTC may provide investigative assistance (including information) to a foreign futures authority “without regard to whether the facts stated in the request would also constitute a violation of the laws of the United States.”

Principle 14: There should be full, accurate and timely disclosure of financial results and other information which is material to investors' decisions.

14. What is your assessment of the current status of your jurisdiction regarding implementation of this Principle?

Implemented Partially implemented Not Implemented

14.1 If implemented:

1. Please describe how this principle has been implemented:

NOTE: The CFTC does not regulate the "securities" offerings that raise funds for pool participations; such securities offerings are subject to the Federal securities law and reference should be made to the responses of the U.S. SEC to ensure a complete understanding of the rules applicable to commodity pool offerings, which are subject to both CFTC and SEC requirements.

A Disclosure Document required by CFTC Rule 4.21 must be delivered to each prospective pool participant on or before the date that a commodity pool operator (CPO) directly or indirectly solicits, accepts or receives funds, securities or other property from the prospective participant. The Disclosure Document must contain the information specified in CFTC Rule 4.24. CFTC Rule 4.24 requires that a Disclosure Document contain specified information in designated categories, including: descriptive information about the CPO and the pool; the business background of the CPO, the major trading advisors and the operators of major investee pools and their principals; principal risk factors for the pool offered; the pool's investment program; fees and expenses; conflicts of interest; relevant litigation; past performance information; transferability and redemption of interests; liability of pool participants; distribution of profits and taxation; ownership of interests by the CPO and other interested parties; financial reporting cycle; and any material information not expressly required by the rules.

CFTC Rules provide for different disclosure requirements, depending upon the nature of the pool in which units of participation are being offered or the level of financial sophistication of the existing or prospective pool participants. CFTC Rule 4.12(b) provides relief (primarily from the specified risk disclosure and performance requirements) where the pool is essentially a vehicle for investing in securities (and that trades commodity interests in a limited fashion solely incidental to its securities trading). CFTC Rule 4.7(a) provides relief from the disclosure and reporting requirements for CPOs who offer pool participation exclusively to QEPs (the specific disclosure requirements of Rule 4.24 do not apply in such a case, but any

offering document that is distributed must contain all disclosures necessary to make the information contained therein not misleading). CPOs who have claimed exemption from registration under CFTC Rule 4.13 are not subject to explicit requirements as to disclosure, but they may not make fraudulent or misleading statements.

Certain new rules have been proposed relative to leveraged positions of firms above specified thresholds. See <http://www.cftc.gov/foia/fedreg00/foi000417a.htm>

The Disclosure Document is required to be filed with the CFTC and the National Futures Association (NFA), an industry self-regulatory organization, either of which may comment on (and effectively block the use of) a non-complying Disclosure Document.

In pool offerings, where the disclosure materials filed for review are found (by the CFTC or NFA) to be inaccurate, incomplete, misleading or otherwise not in compliance with CFTC Rules, the CPO would be directed not to offer units of participation in the pool until such deficiencies were remedied. The CFTC and NFA can act upon information regarding fraudulent or misleading statements or materials whether or not they become aware of such information in the course of reviewing a Disclosure Document.

Principle 15: Holders of securities in a company should be treated in a fair and equitable manner.

15. What is your assessment of the current status of your jurisdiction regarding implementation of this Principle?

Implemented Partially implemented Not Implemented

15.1 If implemented:

1. Please describe how this principle has been implemented:

See applicable SEC requirements. In addition, CFTC Rule 4.24(t) requires that a Commodity Pool Operator's (CPO) Disclosure Document disclose the extent of ownership or beneficial interest in the pool of the CPO, the trading manager, any major CTA, the operator of any major investee pool, and the principals (essentially determined by 10% beneficial interest) of any of the foregoing.

Principle 16: Accounting and auditing standards should be of a high and internationally acceptable quality.

16. What is your assessment of the current status of your jurisdiction regarding implementation of this Principle?

Implemented Partially implemented Not Implemented

16.1 If implemented:

1. Please describe how this principle has been implemented:

CFTC follows the SEC in this regard. See SEC responses.

In addition, CFTC Rule 4.22 requires CPOs to distribute to their pool participants annual reports containing financial statements certified by an independent public accountant. CPOs which claim the relief available under rule 4.7(a) may distribute financial statements that have not been certified by an independent public accountant.

Financial statements filed with the CFTC must also conform to U.S. GAAP, consistently applied. The CFTC will consider other forms of GAAP (*i.e.*, as used in other countries) on a case-by-case basis. The key provision is that the entity's financial statements are reported at fair value with current period recognition of value changes.

The CFTC has authority to review, and to challenge accounting principle application in, any documents filed with the Commission. The CFTC can review any pool financial statements filed with it, which are generally limited to those included in annual reports. The CFTC can review any pool financial data maintained by a CPO. The CFTC typically limits its regular review to the pool's annual report.

CFTC Rule 1.16(b) sets forth CFTC requirements concerning qualification of accountants who may certify the required financial statements for pool offerings. The requirements are similar to those set forth in the SEC Responses.

Principle 17: The regulatory system should set standards for the eligibility and the regulation of those who wish to market or operate a collective investment scheme.

17. What is your assessment of the current status of your jurisdiction regarding implementation of this Principle?

Implemented

Partially implemented

Not Implemented

17.1 If implemented:

1. Please describe how this principle has been implemented:

The CEA and CFTC rules require that CPOs and their sales employees or associated persons be registered with the CFTC and comply with Commission regulation on disclosure and operation of commodity pools. These standards include proficiency testing particularized to pools. For further details, see registration and proficiency links at: <http://www.cftc.gov/cftc/cftcregister.htm>

Principle 18: The regulatory system should provide for rules governing the legal form and structure of collective investment schemes and the segregation and protection of client assets.

18. What is your assessment of the current status of your jurisdiction regarding implementation of this Principle?

Implemented

Partially implemented

Not Implemented

18.1 If implemented:

1. Please describe how this principle has been implemented:

The CFTC Part 4 rules require that a pool be a separate entity from the pool operator. The rules also require pool assets to be segregated from pool operators assets. There are, however, no requirements as to the custodianship of pool assets other than those held by commodity brokers or (futures commission merchants).

Principle 19: Regulation should require disclosure, as set forth under the principles for issuers, which is necessary to evaluate the suitability of a collective investment scheme for a particular investor and the value of the investor's interest in the scheme.

19. What is your assessment of the current status of your jurisdiction regarding implementation of this Principle?

Implemented

Partially implemented

Not Implemented

19.1 If implemented:

1. Please describe how this principle has been implemented:

The CFTC Part 4 rules require the disclosure of risks to the pool, the pool strategies, and apply standards to achieve uniformity in the presentation of financial and trading results. Pool disclosure documents are reviewed by NFA subject to CFTC oversight.

A Disclosure Document required by CFTC Rule 4.21 must be delivered to each prospective pool participant on or before the date that a commodity pool operator (CPO) directly or indirectly solicits, accepts or receives funds, securities or other property from the prospective participant. The Disclosure Document must contain the information specified in CFTC Rule 4.24. CFTC Rule 4.24 requires that a Disclosure Document contain specified information in designated categories, including: descriptive information about the CPO and the pool; the business background of the CPO, the major trading advisors and the operators of major investee pools and their principals; principal risk factors for the pool offered; the pool's investment program; fees and expenses; conflicts of interest; relevant litigation; past performance information; transferability and redemption of interests; liability of pool participants; distribution of profits and taxation; ownership of interests by the CPO and other interested parties; financial reporting cycle; and any material information not expressly required by the rules.

CFTC Rules provide for different disclosure requirements, depending upon the nature of the pool in which units of participation are being offered or the level of financial sophistication of the existing or prospective pool participants. CFTC Rule 4.12(b) provides relief (primarily from the specified risk disclosure and performance requirements) where the pool is essentially a vehicle for investing in securities (and that trades commodity interests in a limited fashion solely incidental to its securities trading). CFTC Rule 4.7(a) provides relief from the disclosure and reporting requirements for CPOs who offer pool participation exclusively to QEPs (the specific disclosure requirements of Rule 4.24 do not apply in such a case, but any offering document that is distributed must contain all disclosures necessary to make the information contained therein not misleading). CPOs who have claimed exemption from registration under CFTC Rule 4.13 are not subject to explicit requirements as to disclosure, but they may not make fraudulent or misleading statements.

For more details regarding CPO disclosure, see: Filing CPO and CTA Disclosure Documents at: <http://www.cftc.gov/tm/tmcompliance.htm#cpoctadd>

Certain new rules have been proposed relative to leveraged positions of firms above specified thresholds. See <http://www.cftc.gov/foia/fedreg00/foi000417a.htm>

Principle 20: Regulation should ensure that there is a proper and disclosed basis for asset valuation and the pricing and the redemption of units in a collective investment scheme.

20. What is your assessment of the current status of your jurisdiction regarding implementation of this Principle?

Implemented Partially implemented Not Implemented

20.1 If implemented:

1. Please describe how this principle has been implemented:

The CFTC sets requirements for the calculation of participant net asset value and requires periodic financial reporting to pool participants. Redemption conditions must be specified in pool disclosure documents. See Disclosure Documents: A Guide for CPOS and CTAs” at: <http://www.nfa.futures.org/compliance/dd99.html>

Principle 21: Regulation should provide for minimum entry standards for market intermediaries.

21. What is your assessment of the current status of your jurisdiction regarding implementation of this Principle?

Implemented Partially implemented Not Implemented

21.1 If implemented:

1. Please describe how this principle has been implemented:

The CEA and CFTC rules specify the fitness and propriety, financial, competence and other standards applicable to each class of registrant under the CEA. The National Futures Association (NFA), a registered futures association acting under delegated CFTC authority, conducts processing of registration applications. Registration processing includes a review of fingerprint cards and, in the case of foreign-based material persons or principals, checks with the applicable foreign

regulators and with Interpol. The CEA contains numerous statutory disqualifications from registration. See NFA registration procedures at: <http://www.nfa.futures.org/registration/index.html>

Principle 22: There should be initial and ongoing capital and other prudential requirements for market intermediaries that reflect the risks that the intermediaries undertake.

22. What is your assessment of the current status of your jurisdiction regarding implementation of this Principle?

Implemented Partially implemented Not Implemented

22.1 If implemented:

1. Please describe how this principle has been implemented:

The CEA and CFTC rules specify initial and ongoing capital requirements. In the case of joint futures commission merchant/securities broker-dealers, the requirements are harmonized. Exchanges or SROs, such as NFA, may impose higher requirements than the CFTC minimums to reflect volume and location of business or clearing obligations, among other things. The CFTC can enforce SRO requirements in that case.

Principle 23: Market intermediaries should be required to comply with standards for internal organization and operational conduct that aim to protect the interests of clients, ensure proper management of risk, and under which management of the intermediary accepts primary responsibility for these matters.

23. What is your assessment of the current status of your jurisdiction regarding implementation of this Principle?

Implemented Partially implemented Not Implemented

23.1 If implemented:

1. Please describe how this principle has been implemented:

The CFTC requires that market intermediaries must be registered with the CFTC through NFA, have internal financial and supervisory controls and meet specific requirements with respect to the handling of customer funds. Inadequacies in controls of futures commission merchants must be reported by the firm, its auditors, or its SRO to the CFTC. The CFTC has required written internal control procedures with respect to material affiliates and has proposed additional controls for pools above a specified size.

Principle 24: There should be a procedure for dealing with the failure of a market intermediary in order to minimize damage and loss to investors and to contain systemic risk.

24. What is your assessment of the current status of your jurisdiction regarding implementation of this Principle?

Implemented Partially implemented Not Implemented

24.1 If implemented:

1. Please describe how this principle has been implemented:

The CFTC has a market disruption contingency plan, which specifies procedures for financial and market disruptions, bankruptcy rules that facilitate the transfer of accounts, and daily information on large concentrations on the wrong side of the market. Registered firms are required to file “early warning” notices with the CFTC when regulatory capital falls to a certain level.

The CFTC also cooperates with other domestic and foreign regulators on an ad hoc and formal MOU basis by sharing information on firms experiencing financial and other operational difficulties. For example, the CFTC is a signatory to the *Declaration on Cooperation and Supervision of International Futures Markets and Clearing Organisations (Declaration)*, sometimes referred to as the “Boca Declaration.”

The *Declaration* (and its companion exchange memorandum of understanding) were at the core of improvements in international cooperation contemplated at the 1995 Windsor meeting. Under the *Declaration*, the occurrence of agreed triggering events affecting an exchange member’s financial resources, positions, price movements or price relationships or suggesting manipulation or other abusive conduct will prompt the sharing of information. See *Declaration* paragraphs 2.2 and 2.3.

Principle 25: The establishment of trading systems including securities exchanges should be subject to regulatory authorization and oversight.*

25. What is your assessment of the current status of your jurisdiction regarding implementation of this Principle?

Implemented Partially implemented Not Implemented

25.1 If implemented:

1. Please describe how this principle has been implemented:

In general, all products subject to CFTC jurisdiction must be conducted on or subject to the rules of a regulated market, unless exempted or otherwise subject to staff “no-action” positions. The CEA as amended by the Commodity Futures Modernization Act of 2000 establishes two tiers of regulated markets, designated contract markets and registered derivatives transaction execution facilities. In addition, the CEA as amended provides for two markets exempt from regulation, exempt boards of trade (trading, for example, commodities having a nearly inexhaustible deliverable supply among “eligible commercial participants”) and, under section 2(h)(3) of the CEA, exempt commercial markets.

Designated contract markets and derivatives transaction execution facilities are required to be authorized as such by the CFTC and remain subject to continuing CFTC oversight. Although the CEA, as amended, exempts certain markets from CFTC regulatory oversight, the CEA at the same time affirmatively vests the CFTC with comprehensive anti-manipulation and antifraud enforcement authority over these trading facilities. Thus, the CFTC is charged with monitoring these markets for manipulation and fraudulent conduct, and enforcing the anti-manipulation and antifraud provisions of the CEA. The informational requirements of the CEA and by recently proposed rules are designed to ensure that the CFTC can effectively perform these functions. See proposed rules at: <http://www.cftc.gov/foia/fedreg01/foi010309a.htm>

Principle 26: There should be ongoing regulatory supervision of exchanges and trading systems which should aim to ensure that the integrity of trading is maintained through fair and equitable rules that strike an appropriate balance between the demands of different market participants.

26. What is your assessment of the current status of your jurisdiction regarding implementation of this Principle?

Implemented Partially implemented Not Implemented

26.1 If implemented:

1. Please describe how this principle has been implemented:

As noted previously, the Commodity Futures Modernization Act of 2000 amended the CEA to provide for regulation that calibrates the level of regulation to the needs of the different market participants and products. The CEA as amended establishes two tiers of regulated markets, designated contract markets and registered derivatives transaction execution facilities. In addition, the CEA as amended provides for two markets exempt from regulation, exempt boards of trade (trading, for example, commodities having a nearly inexhaustible deliverable supply among “eligible commercial participants”) and, under section 2(h)(3) of the CEA, exempt commercial markets. The level of regulation reflects the type of product traded (i.e., a product having a nearly inexhaustible supply is less likely to be subject to manipulation) and the type of participant (i.e. a commercial or institutional participant).

The CEA provides for oversight of the establishment of designated contract markets whether operating as open outcry or electronic markets (including oversight of the contracts traded, exchange rules and governance); ongoing surveillance of such markets, including direct surveillance of large traders, to deter and detect trading abuses, manipulation and fraud; rule enforcement audits relating to financial compliance, trade practice compliance, exchange disciplinary programs and other responsibilities; an enforcement program to investigate and prosecute violations of the Act; authorization (based on a fitness review) of persons who solicit or accept (including execute, clear or carry) orders for customers, manage customer accounts or provide trading advice; protection of customer funds; dispute resolution mechanisms; dissemination of transaction information; record keeping; and a bankruptcy framework which supports the disposition of collateral and positions in the event of member insolvency or default consistently with the rules of the exchange and the Bankruptcy Code.

Electronic markets that are adjuncts of established designated contract markets are reviewed through submission of their rules and information on their trading algorithm. In this regard, the CBOT’s a/c/e rules were reviewed using a Policy Statement issued in 1990 that incorporates the ten principles relating to the regulation of screen-based derivatives trading systems adopted by the International Organization of Securities Commissions in 1990.

The CFMA does not diminish the CFTC's long-standing responsibility to conduct a full panoply of oversight activities, including market, trade practice, and financial surveillance, of designated contract markets. CFTC staff periodically will review the rules and procedures adopted by each designated contract market to comply with the core principles and the effectiveness of those rules and procedures. Satisfaction of the core principles will require that a designated contract market operate effective programs to insure the integrity of its markets and prices, to deter manipulation, to protect the market's financial integrity, and to protect customers. We anticipate that these reviews will result in written reports submitted to the CFTC and made available to the general public. The CFTC's oversight activities would also be supported by the CFTC's enforcement program as appropriate.

2. Are further improvements or changes proposed? If so, please describe.

NOTE: The CFTC is proposing a series of new rules to implement various provisions of the Commodity Futures Modernization Act of 2000. Interested readers should refer to the CFTC's web-site for details at www.cftc.gov.

Principle 27: Regulation should promote transparency of trading.

27. What is your assessment of the current status of your jurisdiction regarding implementation of this Principle?

Implemented Partially implemented Not Implemented

27.1 If implemented:

1. Please describe how this principle has been implemented:

Exchanges provide real time price transparency to participants and delayed access to quotes to various vendors.

Exchange rules are reviewed to ensure that they provide equitable availability of accurate and timely trade and, where relevant, quotation information to all equally situated participants. In this regard, the IOSCO 1990 screen based trading principles have been adopted by the CFTC as a statement of CFTC policy. 55 Federal Register 48670 (November 21, 1990). Principle 2 on Transparency, which requires that accurate and timely trade and quotation information be made available on an equitable basis to all system participants, has been applied.

Principle 28: Regulation should be designed to detect and deter manipulation and other unfair trading practices.

28. What is your assessment of the current status of your jurisdiction regarding implementation of this Principle?

Implemented Partially implemented Not Implemented

28.1 If implemented:

1. Please describe how this principle has been implemented:

The CFTC conducts a market surveillance program to detect and prevent price manipulation and other abusive conduct in futures and option markets. The principal goals of market surveillance are to spot adverse situations in these markets and to pursue appropriate remedial actions, in coordination with the involved exchange, to avoid market disruption. To accomplish these objectives the market surveillance staff must determine when a trader's position in a futures market becomes so large relative to other market factors that the trader is capable of causing prices to diverge from legitimate supply and demand conditions. The surveillance staff routinely collects and analyzes daily data concerning overall supply and demand conditions in the cash market, cash and future prices and price relationships, and the sizes of hedgers' and speculators' positions in the futures market.

At the heart of the CFTC's market surveillance system is its large-trader reporting system. In order to identify potentially disruptive futures positions, the CFTC staff uses its reporting system to collect and analyze data on large trader positions in all commodities. Reportable positions—daily reports of futures positions above specified levels set for reporting purposes—are obtained from futures commission merchants, clearing members and foreign brokers. Exchanges also provide the daily positions that each clearing member is carrying in each futures and options contract on each underlying commodity.

Since traders frequently carry futures positions through more than one FCM and since individuals sometimes control, or have a financial interest in more than one account, the CFTC routinely collects information that enables its surveillance staff to aggregate related accounts. FCMs must file a form that identifies each new account with reportable positions for each futures contract. In addition, if a trader's position reaches a reportable level, the trader may be required to file a more detailed identification report to identify accounts and reveal any relationships that may exist with other accounts or traders.

An additional monitoring mechanism allows surveillance economists to investigate

further the positions of large traders by instituting a “special call,” which requires a trader to report their futures and option positions with all brokerage firms, or their cash market or OTC positions. The trader is required to give information on their trading and delivery activity. This mechanism may be used when a trader is using too many brokers to be easily monitored through required reports. Special calls also may be used to examine cash market positions and commitments in relation to futures market positions to access the economic rationale of the trader’s overall position.

In summary, the CFTC has the authority and techniques to investigate and discover the identifies of the true account owners and controllers of large positions, whether domestic or foreign.

The market surveillance process is not conducted exclusively at the CFTC. If a problem develops, it is usually handled jointly by the CFTC and the affected exchange. Relevant surveillance information is shared and, when appropriate, corrective actions are coordinated. The CFTC customarily gives the exchange the first opportunity to resolve the problem itself, either informally or through emergency action. If an exchange fails to take actions that the CFTC deems appropriate, the CFTC has emergency powers under which it can order the exchange to take actions specified by the CFTC.

Principle 29: Regulation should aim to ensure the proper management of large exposures, default risk and market disruption.

29. What is your assessment of the current status of your jurisdiction regarding implementation of this Principle?

Implemented Partially implemented Not Implemented

29.1 If implemented:

1. Please describe how this principle has been implemented:

Both the CFTC and the exchanges monitor large exposures. See the description of the CFTC’s large trader reporting system in our response to principle 28 above.

As noted previously, the CFTC is a signatory to the Declaration on Cooperation and Supervision of International Futures Markets and Clearing Organisations (Declaration), sometimes referred to as the “Boca Declaration.” The Declaration (and its companion exchange memorandum of understanding) was at the core of improvements in international cooperation contemplated at the 1995 Windsor meeting. Under the Declaration, the occurrence of agreed triggering events

affecting an exchange member's financial resources, positions, price movements or price relationships or suggesting manipulation or other abusive conduct will prompt the sharing of information.

The CFTC and exchanges have well-developed market disruption contingency plans and the exchanges are responsible for maintaining orderly markets.

Principle 30: Systems for clearing and settlement of securities transactions should be subject to regulatory oversight, and designed to ensure that they are fair, effective and efficient and that they reduce systemic risk.

30. What is your assessment of the current status of your jurisdiction regarding implementation of this Principle?

Implemented Partially implemented Not Implemented

30.1 If implemented:

1. Please describe how this principle has been implemented:
CFTC has well-developed arrangements for oversight of existing clearing institutions. CEA has its own bankruptcy authority and the Bankruptcy Code has special provisions related to clearing organizations that exempt them from the automatic stay, permit the use of collateral and facilitate the transfer of positions, notwithstanding bankruptcy. (There is similar law addressing treatment of over-the-counter positions in FIDCIA.) The CFTC reviews the risk management practices of the clearing organizations every year in connection with the Fed margin review. The clearing organizations also make their financial integrity programs transparent to market users and participants. There is a current case pending – Griffin – which could have an impact on this.

2. Are further improvements or changes proposed? If so, please describe.

In May 2001 the CFTC proposed rules to implement the provisions of Section 5b of the Commodity Exchange Act which provides for CFTC regulation of certain derivatives clearing organizations (DCO). The proposed rules apply to registered derivatives clearing organizations, applicants for registration, and entities required to be registered under the Act. They specify the form and provide guidance for the content of applications for DCO registration and the procedures for processing DCO applications. They also include provisions assisting the Commission in carrying out its oversight responsibilities with respect to the operations and

activities of DCOs and in enforcing compliance by DCOs with the core principles and other provisions of the Act and regulations. See proposed rules at: <http://www.cftc.gov/files/foia/fedreg01/foi010514a.pdf>